

ESTTA Tracking number: **ESTTA416989**

Filing date: **06/29/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	CardioMEMS, Inc.
Granted to Date of previous extension	06/29/2011
Address	387 Technology Circle, N.W., Suite 500 Atlanta, GA 30313 UNITED STATES
Attorney information	Olivia Maria Baratta Kilpatrick Townsend & Stockton LLP 1100 Peachtree St. NE., Suite 2800 Atlanta, GA 30309 UNITED STATES tmadmin@kilpatricktownsend.com, mbaratta@kilpatricktownsend.com, vnorthcutt@kilpatricktownsend.com

### Applicant Information

Application No	85082098	Publication date	03/01/2011
Opposition Filing Date	06/29/2011	Opposition Period Ends	06/29/2011
Applicant	Medinol Ltd. Kiryat Atidim, Building 7, 5th floor Tel Aviv 61581, ISRAEL		

### Goods/Services Affected by Opposition


Class 010. All goods and services in the class are opposed, namely: Stents
---

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

### Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77693458	Application Date	03/18/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CHAMPION		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 010. First use:  Medical diagnostic sensors for measuring properties of the body, namely, pressure, corresponding catheter-based delivery apparatus to deliver sensors to locations within the body; telemetry devices for medical application and software to interrogate, receive, process and display pressure data or derived quantities for viewing and printing sold as a unit</p> <p>Class 042. First use:  Providing a web site that enables users to upload and access health and medical data</p>

Attachments	77693458#TMSN.jpeg ( 1 page )( bytes ) CHAMPIONIR NOO.pdf ( 6 pages )(28955 bytes )
-------------	--

### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Maria Baratta/
Name	Olivia Maria Baratta
Date	06/29/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CARDIOMEMS, INC.,	)	
	)	In re Serial No. 85/082098
Opposer,	)	
	)	Mark: CHAMPIONIR
v.	)	
	)	Opposition No. _____
MEDINOL LTD.,	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Opposer CardioMEMS, Inc. will be damaged by the registration of the CHAMPIONIR mark underlying Application Serial No. 85/082098 and states the following for its Notice of Opposition to that application:

1. Opposer CardioMEMS, Inc. (“CardioMEMS”) is a Delaware corporation with a principal place of business at 387 Technology Circle, Suite 500, Atlanta, Georgia 30313. CardioMEMS is a medical device company that has developed and is commercializing a proprietary wireless sensing and communication technology for the human body.

2. CardioMEMS is the owner of application Serial No. 77/693458, filed on March 18, 2009, to register the CHAMPION mark for the following goods and services:

Medical diagnostic sensors for measuring properties of the body, namely, pressure, corresponding catheter-based delivery apparatus to deliver sensors to locations within the body; telemetry devices for medical application and software to interrogate, receive, process and display pressure data or derived quantities for viewing and printing sold as a unit, in Class 10; and

Providing a web site that enables users to upload and access health and medical data, in Class 44.

3. Opposer’s CHAMPION heart failure sensor is a miniature device that is implanted into a patient’s pulmonary artery using a catheter-based technique. After the sensor is

implanted, the patient performs wireless measurements of his or her pulmonary artery pressure from home. The pressure data is transmitted immediately to a secure database and is available for review by the patient's physician or nurse on the CardioMEMS CHAMPION website.

4. Beginning in 2007, Opposer used its CHAMPION mark in commerce in connection with the Class 10 goods recited in Application Serial No. 77/693458 during a now-completed clinical trial to evaluate the safety and effectiveness of CardioMEMS's heart failure pressure measurement system in certain patients representing approximately 1.5 million of the 6 million heart failure patients in the United States, who historically account for nearly half of all heart failure hospitalizations.

5. The trial enrolled 550 patients who had been hospitalized for heart failure in the previous year, and involved 64 leading heart centers in the United States

6. The trial showed a 30% reduction in the risk of a heart failure-related hospitalization at six months. Over time, the impact increased, as high as 38%. Further, none of the implanted sensors needed to be removed or replaced, and all functioned throughout the course of the trial.

7. The results were presented in or about June 2010 at the European Society of Cardiology Heart Failure Congress 2010 in Berlin, Germany. More than 3,330 participants attended the Congress. The results were presented by the principal investigators of the trial: William Abraham, M.D., Director of the Division of Cardiovascular Medicine at The Ohio State University Medical Center, and Philip Adamson, M.D., Director of the Heart Failure Institute at the Oklahoma Heart Hospital.

8. On July 11, 2010, Applicant applied to register the mark CHAMPIONIR on the Principal Register for use in connection with "stents" in Class 10. Notably, Applicant filed its

application almost immediately after Opposer presented the results of the CHAMPION clinical trial in June 2010.

9. The CHAMPIONIR mark is virtually identical to Opposer's CHAMPION mark in sound, sight, meaning, and commercial impression. Applicant's CHAMPIONIR mark will be used for medical device goods closely related to the medical device goods and services for which Opposer uses its CHAMPION mark. Opposer therefore is the owner of a prior-filed application to register a near-identical mark for closely-related goods, which by itself is a sufficient basis to establish priority.

10. In addition to claiming priority based on its prior-filed application, Opposer also has priority based on its use of the mark in clinical trials, which predates Applicant's filing date.

11. Opposer's CHAMPION mark is an inherently distinctive indicator of origin that additionally has acquired a high degree of recognition, fame, and distinctiveness in the relevant trade or industry and among the relevant consumers as a symbol of the high quality products and services offered by Opposer prior to the filing date of Applicant's application. The public and trade are familiar with and identify Opposer's mark with Opposer and, by reason of this identification, goods and services associated with the mark are understood by the public and trade to be produced, marketed, and supplied under Opposer's authority or otherwise derived from Opposer.

12. Opposer's CHAMPION mark is an important factor in identifying the source of Opposer's goods and services and is distinctive of those goods and services. As a result of its fame and notoriety, Opposer's mark is entitled to a broad scope of protection.

13. Consistent with the widespread use of CardioMEMS's CHAMPION mark, use and recognition of the CHAMPION mark as a brand of CardioMEMS extended throughout the United States prior to the filing date of Applicant's application.

14. Based on the similarities of the marks and the respective goods and services, the relevant public is likely to be confused into believing that Applicant's goods, as offered under the CHAMPIONIR mark, emanate from Opposer, or are authorized, licensed, endorsed, or sponsored by Opposer. Registration of Applicant's mark on the Principal Register thus would be inconsistent with Opposer's prior rights in its CHAMPION mark.

15. Opposer will be damaged by the registration of Applicant's CHAMPIONIR mark because it so resembles Opposer's previously used and well-known mark as to be likely, when used on or in connection with the goods identified in the subject application, to cause confusion, or to cause mistake, or to deceive in violation of section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

16. Opposer will be damaged by registration of Applicant's CHAMPIONIR mark because the mark is likely to dilute the distinctiveness of Opposer's CHAMPION mark by eroding consumers' exclusive identification of the mark with Opposer, and/or by tarnishing and degrading the positive associations and prestigious connotations of the mark, and/or by otherwise lessening the capacity of the mark to identify and distinguish Opposer's goods and services in violation of section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

17. A filing fee in the amount of \$300.00 accompanies this notice. The Director is authorized to debit Deposit Account No. 11-0860 if there is any deficiency in the required fee.

18. Opposer therefore requests that registration of the mark underlying Application Serial No. 85/082098 be refused, and this Notice of Opposition be sustained in Opposer's favor.

This 29th day of June, 2011.

A handwritten signature in cursive script, reading "Olivia Baratta".

---

Olivia Maria Baratta  
James W. Faris  
Kilpatrick Townsend & Stockton LLP  
1100 Peachtree Street, NE  
Suite 2800  
Atlanta, Georgia 30309-4530  
(404) 815-6500

Attorney for Opposer

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CARDIOMEMS, INC.,	)	
	)	In re Serial No. 85/082098
Opposer,	)	
	)	Mark: CHAMPIONIR
v.	)	
	)	Opposition No. _____
MEDINOL LTD.,	)	
	)	
Applicant.	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I served the attached document upon counsel of record by depositing a copy thereof in the United States mail, postage prepaid and addressed as follows:

Anna Erenburg, Esq.  
Cadwalader, Wickersham & Taft LLP  
1 World Financial Center 19<sup>th</sup> Floor  
New York, New York 10281

This the 29th day of June, 2011.



---

Olivia Maria Baratta  
James W. Faris  
Kilpatrick Townsend & Stockton LLP  
1100 Peachtree Street, NE  
Suite 2800  
Atlanta, Georgia 30309-4530  
(404) 815-6500

Attorney for Opposer